

STATE OF MICHIGAN
COURT OF APPEALS

NIGHTWORKS ENTERTAINMENT LIMITED
PARTNERSHIP,

UNPUBLISHED
February 10, 1998

Plaintiff-Appellant,

v

CLOVER MANAGEMENT, INC.,

No. 191767
Washtenaw Circuit Court
LC No. 95-004669 CK

Defendant-Appellee.

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant in this suit for specific performance. This case is being decided without oral argument pursuant to MCR 7.214(E).

By written contract, a writing being necessary to comply with the statute of frauds since a portion of the contract provided for a lease of real property for a ten-year period, MCL 566.108; MSA 26.908, plaintiff was to become purchaser of the assets of defendant's business, including a liquor license when and if transfer of the license was approved by the Liquor Control Commission. The contract provided that, upon execution, plaintiff was to make an earnest money deposit with defendant's agent of \$10,000. Plaintiff failed to do so, and its tardily tendered check for that amount, not provided until more than two months after the execution of the contract, was dishonored by the bank on which it was drawn, although plaintiff alleges that this was due to bank error. Defendant thereupon declared the contract terminated, generating the present suit for specific performance.

Plaintiff's contentions that the law abhors a forfeiture are inapposite to this situation, where plaintiff has forfeited nothing; defendant retains no funds of plaintiff's as a result of termination of this contractual relationship. Rather, this case comes under the established principle that a court of chancery will not grant specific performance unless the party seeking such decree has tendered full performance. *McWilliams v Urban American Land Development Co*, 37 Mich App 587; 194 NW2d 920 (1972). Even if plaintiff's initial part performance could properly have been tendered within a reasonable time after execution of the contract, the more than two months that elapsed here was not a reasonable time,

and specific performance was properly denied. *Nedelman v Meininger*, 24 Mich App 64; 180 NW2d 37 (1970). We further note that under §16.2 of the contract respecting default, the contract itself provided that specific performance would be an available remedy to plaintiff only “as long as purchaser is in compliance with this agreement.”

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly